



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

WYATT EARP HARPER,

Plaintiff,

vs.

JAMES DORRIETY,

Defendants.

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CIVIL ACTION NO. 3:05-1787-HFF-JRM

ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE AND DISMISSING CASE

This is a civil rights action filed pursuant to 28 U.S.C. § 1983. Plaintiff is proceeding *pro se*. The matter is before the Court for review of the report and recommendation (Report) of the United States Magistrate Judge in which he recommends that the Court dismiss the case based on 28 U.S.C. § 1915(g), which limits the number of frivolous lawsuits a prisoner can file. The Report is made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Matthews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or may

recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed his Report on July 5, 2005, and Plaintiff failed to file any objections to the Report.¹ In the absence of such objections, the Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir.1985).

After a thorough review of the Report and the record in this case pursuant to the standards set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that this case be **DISMISSED** *without prejudice*.

IT IS SO ORDERED.

Signed this 26th day of September, 2005, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this Order within **thirty (30)** days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

¹ On July 12, 2005, Plaintiff filed a motion to amend his complaint to allege that the prison where he was being held failed to install fire sprinklers and smoke detectors. Even if the Court were to construe this motion as an objection, Plaintiff's case nonetheless qualifies for dismissal because Plaintiff has not alleged an imminent threat to his life.